**State of New Hampshire**
**Board of Medicine**
**Concord, New Hampshire 03301**

In the Matter of:
Charles C. Canver, M.D.
No.: 8603
(Misconduct Allegations)

## SETTLEMENT AGREEMENT

1. In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine ("NH Board") and Charles C. Canver, M.D. ("Dr. Canver" or "Respondent"), a physician licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the NH Board according to the terms and conditions detailed below.

2. Pursuant to RSA 329:17, I, 329:18 and 329:18-a, and Board of Medicine Administrative Rule ("Med") 206 and 210, the NH Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians. Pursuant to RSA 329:18-a, III, the NH Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.

3. Pursuant to RSA 329:17-c and Med 504.01, the NH Board also has jurisdiction to conduct a reciprocal proceeding against a physician upon receipt of an administratively final order from the licensing authority of another jurisdiction, which imposed disciplinary sanctions against the physician.

4. When reciprocal proceedings are conducted, the NH Board is authorized to impose any disciplinary sanction permitted by RSA 329:17, VI, 329:17-c and Med 504.01 (b) and Med 506.02.

5. If a disciplinary proceeding were conducted in this case, the allegations against the Respondent would be that Dr. Canver committed professional misconduct pursuant to RSA 329:17, VI (d) by failing to abide by United Network of Organ Sharing (UNOS) criteria in procuring organs for his transplant patients. Respondent failed to appropriately assess and communicate the life expectancy of several patients resulting in inaccurate reports to UNOS.

6. In support of these grounds upon which the NH Board could conduct proceedings against Respondent, the Board states:

A. On December 6, 2005, the NH Board received notice that Respondent had been disciplined by the New York State Board for Professional Medical Conduct ("NY Board"). A copy of the final administrative orders were obtained from the NY Board. (Attachment 1, 2 and 3) The conduct at issue is described therein.

B. Respondent had entered into the administrative final order with the NY Board in October of 2005.

7. Respondent agrees that by the above stated conduct, he violated the provisions of RSA 329:17, VI (d).

8. Respondent acknowledges the NH Board's authority to reciprocally discipline him, pursuant to RSA 329:17-c and Med 504.01, and based upon the final administrative orders of the NY Board, which imposed discipline against him.

9. Respondent consents to the following disciplinary and reciprocal action by the NH Board:

A. Respondent's license to practice medicine in the State of New Hampshire is subject to the following limitation: Respondent is prohibited from having any association with or participating in an organ transplant program as an administrator, physician, surgeon or any other position or title. Should Respondent wish to remove this limitation, he must apply to the NH Board in writing and request a show cause hearing where he may present evidence to the NH Board as to why the limitation should be removed.

B. Respondent must abide by all other conditions placed upon him by the NY Board as stated on pages 2-5 of the attached Consent Agreement and Order. (Attachment 2)

C. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.

D. Within ten (10) days of the effective date of this agreement Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physician or work which requires an physician's license and to any agency or authority which licenses, certifies or credentials physicians, with which Respondent is presently affiliated.

E. For a continuing period of five (5) years from the effective date of this *Settlement Agreement*, Respondent shall furnish a copy of this *Settlement*

*Agreement* to any employer to which Respondent may apply for work as a physician or for work in any capacity which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physicians, to which Respondent may apply for any such professional privileges or recognition.

10. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d) and a separate and sufficient basis for further disciplinary action by the Board.

11. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the NH Board based upon the misconduct described above. However, the NH Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the NH Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

12. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the NH Board as a public document.

13. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.

14. The NH Board agrees that in return for Respondent executing this *Settlement Agreement*, the NH Board will not proceed with the formal adjudicatory process based upon the facts described herein.

15. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.

16. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.

17. Respondent understands that the NH Board must review and accept the terms of this *Settlement Agreement*. If the NH Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the NH Board during its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the NH Board.

18. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

19. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.

20. This Settlement *Agreement* shall take effect as an Order of the NH Board on the date it is signed by an authorized representative of the NH Board.

**FOR RESPONDENT**

Date: 2/16/06

Charles Canver, M.D.
Respondent

Date: 2/17/06

Joel Hodes, Esq.
Counsel for Respondent

**FOR THE BOARD/***

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: March 10, 2006

(Signature)

PENNY TAYLOR
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

106488

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER**

**OF**

**CHARLES CANVER, M.D.**

CONSENT ORDER

Upon the application of Charles Canver, M.D., in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 10-18-2005

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

EXHIBIT 1

AD 800-631-6989

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

**IN THE MATTER**
**OF**
**CHARLES CANVER, M.D.**

CONSENT AGREEMENT AND ORDER

Charles Canver, M.D., representing that all of the following statements are true, deposes and says:

That on or about June 30, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 166475 by the New York State Education Department.

My current residential address is 9 Shalimar Court, Loudonville, New York 12211. My current practice address is King Faisal Heart Institute, King Faisal Specialist Hospital and Research Centre, P.O. Box 3354, Riyadh 11211, Kingdom of Saudi Arabia. I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with twelve specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I plead no contest to the twelve specifications, and agree to the following penalty:

> A permanent limitation on my medical license prohibiting me from having any association with or participating in an organ transplant program as an administrator, physician, surgeon or in any other position or title.



EXHIBIT 2

I shall complete an ethics course which has been approved in writing by the Director of the Office of Professional Medical Conduct.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent

Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED 10/7/2005

CHARLES CANVER, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 10/7/05

JOEL L. HODES, ESQ.
Whiteman Osterman & Hanna, LLP
Attorneys for Respondent

DATE: 10/12/05

TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/13/2005

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT A

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
CHARLES CANVER, M.D.

STATEMENT
OF
CHARGES

Charles Canver, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 30, 1986, by the issuance of license number 166475 by the New York State Education Department.

## FACTUAL ALLEGATIONS

A. At all relevant times set forth below, Respondent was the heart transplant surgeon in the Heart Transplant Program at the Albany Medical Center Hospital (AMCH) in Albany, New York. The United Network of Organ Sharing (UNOS) administers and oversees the organ procurement program in the United States, and specifically establishes criteria for prioritizing patients requiring heart transplants. Patients awaiting heart transplant who are designated by the transplant hospital as status "1A" under the UNOS criteria are the highest priority for heart transplant. To qualify for status "1A" a patient must be inpatient at a listing transplant hospital and have at least one of the medical devices or therapies listed in the five subcategories of status "1A", denominated A, B, C, D, and E.

Respondent provided medical care to Patient A (patients are identified by name in Appendix A below) at various times at the AMCH, during the period including September 23, 2001 through November 1,2001. On October 18, 2001, Respondent performed a heart transplant. Respondent deviated from

EXHIBIT 3

NGAD 800-631-6989

accepted standards of professional conduct as follows:

1. Respondent, on or about September 27,2001, listed Patient A with the UNOS as status 1A (D), and represented, among other things, that Patient A was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and /or that "Patient [A] is in the ICU with S-G [Swan Ganz] receiving multiple drips."
   Respondent knew or should have known that Patient A's right heart catheter had been discontinued on September 27, 2001, and that as of the time that the catheter was discontinued, Patient A did not qualify for status 1A (D). Respondent failed to report to UNOS Patient A 's change in status as a result of the discontinuation of the right heart catheter on September 27, 2001.

2. Respondent on or about October 4, 2001, listed Patient A with UNOS as status 1A (D) , and represented, among other things, that Patient A was undergoing " continuous hemodynamic monitoring of left ventricular filling pressures" and /or that "Patient [A] is in the ICU with Swan receiving the above drips."
   Respondent knew or should have known that a right heart catheter placed on October 1, 2001 had been discontinued on October 2, 2001 and that no such catheter was in place on October 4, 2001.
   Respondent knew or should have known at the time of the UNOS listing on October 4, 2001, that Patient A did not qualify for status 1A(D).

3. Respondent, on or about October 11, 2001, listed Patient A with UNOS as status 1A( E), and represented, among other things, that Patient A " has a life expectancy without a heart transplant of less than 7 days" and/or that Patient A " is in the ICU with S-G receiving above drips".

Respondent failed to appropriately assess Patient A's life expectancy and /or make an accurate report to UNOS. Respondent knew or should have known that Patient A's most recent right heart catheter had been discontinued prior to October 11, 2001.

4. Respondent knew or should have known that right heart catheterizations were ordered for Patient A on or about the following dates: September 26, 2001, October 1, 2001, October 8, 2001 and October 15, 2001, and that the catheters on each occasion were removed within 48 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient A on the occasions stated above.

B. Respondent provided medical care to Patient B at AMCH during the period including March 2, 2002 to June 7, 2002. Respondent, among other things, performed pre-cardiac transplant assessments of Patient B. Respondent listed Patient B as status 1A with UNOS at or about the time of a Transplant Committee Meeting at AMCH. On May 26, 2002, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about March 13, 2002, listed Patient B with UNOS as Status 1A(D), and represented among other things, that Patient B was "in the ICU with S-G receiving above drips."
Respondent knew or should have known that Patient B did not have a right heart catheter in place on March 13, 2002, and that Patient B did not qualify for Status 1A(D).

2. Respondent, on or about April 10, 2002, listed Patient B with UNOS as in Status 1A(E), and represented, among other things, that Patient B "has life expectancy without a heart transplant of less than 7 days".
Respondent failed to appropriately assess Patient B's life expectancy and/or accurately report to UNOS.

3. Respondent, on or about April 17, 2002, listed Patient B with UNOS as in Status 1A(E), and represented, among other things, that Patient B "has a life expectancy without a heart transplant of less than 7 days."
Respondent failed to appropriately assess Patient B's life expectancy and/or accurately report it to UNOS.

4. Respondent, on or about April 24, 2002, listed Patient B with UNOS as in Status 1A(E), and represented among other things, that Patient B "has a life expectancy without a heart transplant of less than 7 days."
Respondent failed to appropriately assess Patient B's life expectancy and/or make an accurate report of Patient B's health status to UNOS.

5. Respondent, on or about May 1, 2002, listed Patient B with UNOS as in Status 1A(E), and represented, among other things, that Patient B

"has a life expectancy without a heart transplant of less than 7 days." Respondent failed to appropriately assess Patient B's life expectancy and/or make an accurate report of Patient B's health status to UNOS.

6. Respondent, on or about May 8, 2002, listed Patient B with UNOS as Status 1A(E), and represented, among other things, that Patient B "has a life expectancy without a heart transplant of less than 7 days." Respondent failed to appropriately assess Patient B's life expectancy and/or make an accurate report of Patient B's health status to UNOS.

7. Respondent, on or about May 15, 2002, listed Patient B with UNOS as Status 1A(E), and represented, among other things, that Patient B "has a life expectancy without a heart transplant of less than 7 days." Respondent failed to appropriately assess Patient B's life expectancy and/or make an accurate report to UNOS.

8. Respondent, on or about May 22, 2002, listed Patient B with UNOS as in Status 1A(E), and represented, among other things, that Patient B "has a life expectancy without a heart transplant of less than 7 days." Respondent failed to appropriately assess Patient B's life expectancy and/or make an accurate report to UNOS.

9. Respondent knew, or should have known that right heart catheterizations were ordered for Patient B on or about the following dates: March 6, 2002, March 12, 2002, March 18, 2002, March 20, 2002, March 25, 2002, April 1, 2002, April 8, 2002, April 15, 2002,

April 22, 2002, April 29, 2002, May 7, 2002, May 13, 2002, May 20, 2002, and that the catheters on each occasion were removed within 48 hours of their placement. On one or more of these occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient B.

C. Respondent provided medical care to Patient C at the AMCH during the period including November 28, 2000 through March 6, 2001. Respondent, among other things, performed precardiac transplant assessments of Patient C. On February 7, 2001, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about December 12, 2000, listed Patient C with UNOS as status 1A(D), and represented, among other things, that Patient C was undergoing continuous hemodynamic monitoring of left ventricular filling pressures and/or that Patient [C] is "in the ICU with s-g monitoring and receiving multiple drips. As pulmonary HTN. Minor renal dysfunction (cre=1.6) and pulmonary edema. Does not tolerate high Dobutamine".

Respondent knew or should have known that Patient C's right heart catheter was discontinued on December 13, 2000, and as of that date, Patient C did not qualify for status 1A(D). Respondent failed to report to UNOS Patient C's change in status as a result of the discontinuance of the right heart catheter on December 13, 2000.

2. Respondent, on or about December 18, 2000, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less that seven days" and/or that Patient C "is in the ICU with S-G monitoring receiving Milrinone 0.5 Mcg/Kg Dobutamine 25 mcg/kg/min Nipride 0.76 mcg/kg Pap=75/52, Pa=54 wedge=47. Hemoptysis. Will need LVAD soon."

Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

3. Respondent, on or about December 25, 2000, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less than 7 days" and/or that Patient C "is in the ICU with S-G monitoring, receiving Milrinone 0.5 mcg/kg/min, Dobutamine 2.5 mcg/kg/min". Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

4. Respondent, on or about January 1, 2001, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less than 7 days" and/or that Patient C "is in the ICU with swan[-ganz] monitoring receiving 3 inotrope agents = Dobutamine 2.5,Milrinone 0.51, Nipride 0.75, has refractory pulmonary hypertension-PAP=54/24, PAP=34, W=20, TGP=14. Still Symptamic-pulmonary [sic] and peripheral edema [sic]."

Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

5. Respondent, on or about January 10, 2001, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less than 7 days" and/or that Patient C "is in the ICU with S-G monitoring receiving Milrinone 0.5, Nipride 0.75, Dobutamine 5, PAP=60/24, PAP=35, W=24, CVP=19. Still has significant pulmonary HTN. Increase Dobutamine to 5, for a reduced CI, may need LVAD. Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

6. Respondent, on or about January 24, 2001, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less than 7 days" and/or Patient C "is in the ICU with S-G monitoring receiving Milrinone 0.5 mg/kg/min, Dobutamine 5 mg/kg/min. Patient still has pulmonary HTN. PAP=60/20, PAP=38, TGP=16, CVP=20." Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

7. Respondent, on or about February 5, 2001, listed Patient C with UNOS as status 1A(E), and represented, among other things, that Patient C "has a life expectancy without a heart transplant of less than 7 days" and/or that Patient C "is in the ICU with swan[-ganz] monitoring receiving I.V. = Dobutamine 5 Mcg, Prineacan 0.5 Mcg,

Nipride 0.05 Mcg, Douex 4 Mcg, still has relent [sic] leu [sic] pulmonary hgn [sic] PAP=56/30, W=24, TPG-14. Will need LVAD this week".

Respondent failed to appropriately assess Patient C's life expectancy and/or make an accurate report to UNOS.

8. Respondent, knew, or should have known that right heart catheterizations were ordered for Patient C on or about the following dates: December 1, 2000, December 11, 2000, December 13, 2000, December 18, 2000 and December 26, 2000, and that the catheters on each occasion were removed within 48 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of the patient.

D. Respondent provided medical care to Patient D at the AMCH during the period including January 11, 2001 through March 9, 2001. Respondent, among other things, performed pre-cardiac transplant assessments of Patient D, and on February 23, 2001, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about January 17, 2001, listed Patient D with UNOS as Status 1A (A) and 1A (D), and represented, among other things, that Patient D had an intra aortic balloon pump and that Patient D was undergoing continuous hemodynamic monitoring of left ventricular filling pressures, among other things.

i. Respondent knew or should have known that Patient D's intra aortic balloon pump was removed on January 16, 2001, and as of that date, Patient D did not qualify for Status 1A (A).

ii. Respondent knew or should have known that Patient D's right heart catheter was discontinued prior to January 17, 2001, and as of that date, Patient D did not qualify for Status 1A (D).

2. Respondent, on or about January 31, 2001, listed Patient D with UNOS as Status 1A(E), and represented, among other things, that Patient D "has a life expectancy without a heart transplant of less than seven days" and/or that Patient D "is in the ICU with swan monitors receiving Milrinone .43 mcg/kg/min. Dopamine 3.8 mcg/kg/min, Bunex IV 2 mcg/kg/min. Just removed IABP [intra aortic balloon pump], TGP=18, CI=2.0. Will need LVAD if not improved withing the next few days."

i. Respondent knew or should have known that Patient D's Swan-Ganz catheter was not in place on January 31, 2001.

ii. Respondent knew or should have known that Patient D was not receiving 3.8 mcg/kg/min. of Dopamine on January 31, 2001 but was receiving 1.72 mcg/kg/min. of Dopamine on that date.

iii. Respondent failed to appropriately assess Patient D's life expectancy and/or Make an accurate report to UNOS.

3. Respondent, on or about February 7, 2001, listed Patient D with UNOS as Status 1A(E), and represented, among other things, that Patient D "has a life expectancy without a heart transplant of less than

seven days" and/or that Patient D "is in the ICU with S-G monitoring receiving Milrinone 0.5 mcg/kg/min. Dabuta 27 mcg/kg/min. Had 3 episodes of sustained VT (variable tachycardia) required defibrillator, on IV _____, PAP=58/28, W=24 with v-wave. Unable to increase drips due to ventri ectopy".

i. Respondent failed to appropriately assess Patient D's life expectancy and/or make an accurate report to UNOS.

ii. Respondent knew or should have known that Patient D's right heart catheter had been removed prior to February 7, 2001, and as of that date Patient D did not qualify for status 1A.

4. Respondent, on or about February 14, 2001, listed Patient D with UNOS as Status 1A(E), and represented, among other things, that Patient D "has a life expectancy without a heart transplant of less than seven days" and/or that Patient D was in the ICU with S-G monitoring receiving Milrinone 0.47 mcg/kg/min. stopped Dobuta due to V-Tach arrest/CPR, on IV _____, scheduled for ICD transplant. PAP=48/28, CI=2.3. Will need LVAD if continues to have V-Tach/arrest."

i. Respondent failed to appropriately assess Patient D's life expectancy and/or make an accurate report to UNOS.

ii. Respondent knew or should have known that Patient D's right heart catheter had been removed prior to February 14, 2001, and as of that date Patient D did not qualify for status 1A(D).

5. Respondent, on or about February 21, 2001, listed Patient D with UNOS as Status 1A(E), and represented, among other things, that Patient D "has a life expectancy without a heart transplant of less than seven days" and/or Patient D "is in the ICU with S-G monitoring receiving Milrinone 0.43 mcg/kg/min. having episodes of VT on high doses of IV_____. Unable to tolerate Doputa (due to VT/VF). PAP improving 36/18, very high risk for sudden death."

   i. Respondent failed to appropriately assess Patient D's life expectancy and/or make an accurate report to UNOS.

   ii. Respondent knew or should have known that Patient D's right heart catheter had been removed prior to February 21, 2001, and as of that date, Patient D did not qualify for status 1A(D).

6. Respondent, knew or should have known that right heart catheterizations were ordered for patient D on or about the following dates: January 12, 2001, January 22, 2001, January 29, 2001, February 5, 2001, and February 12, 2001, and that the catheters on each occasion were removed within 48 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient D.

E. Respondent provided medical care to Patient E on various occasions at AMCH during the period including December 5, 2001 through January 31, 2002. Respondent, among other things, performed pre-cardiac transplant assessments of Patient E, and on January 13, 2002, Respondent performed a heart transplant. Respondent deviated from accepted standards of

professional conduct as follows:

1. Respondent, on or about December 14, 2001, listed Patient E with UNOS as Status 1A(D) and represented, among other things, that Patient E was "in the I.C.U. with s-g [Swan Ganz monitoring] receiving multiple above drips. Severe pulmonary HTN. Has high PRA (60%)". Respondent knew or should have known that Patient E did not have a right heart catheter in place on December 14, 2001, and that Patient E did not qualify for Status 1A(D).

2. Respondent, on or about December 21, 2001, listed Patient E with UNOS as Status 1A(D) and represented, among other things, that Patient E was receiving "continuous hemodynamic monitoring of left ventricular filling pressures". Respondent also referred to the narrative entered on the December 14, 2001 Heart Status 1A Justification Form for Patient E, as set forth above.

   Respondent knew or should have known that Patient E did not have a right heart catheter in place on December 21, 2001, and that Patient E did not qualify for Status 1A(D).

3. Respondent, on or about January 28, 2002, listed Patient E with UNOS at Status 1A(E), and represented among other things, that Patient E "has a life expectancy without a heart transplant of less than seven days". Respondent also referenced the narrative statement of Patient E's condition which appeared in the December 14, 2001 Heart Status 1A Justification Form, as set forth above.

Respondent failed to appropriately assess Patient E's life expectancy and/or make an accurate report to UNOS.

4. Respondent on or about January 4, 2002, listed Patient E with UNOS as in Status 1A(E) and represented, among other things, that Patient E "has a life expectancy without a heart transplant of less than seven days". Respondent further represented that Patient E's condition was as represented in the narrative filed in the Heart Status 1A Justification Form dated December 14, 2001. As set forth above.
Respondent failed to appropriately assess Patient E's life expectancy and/or make an accurate report to UNOS.

5. Respondent, on or about January 11, 2002, listed Patient E with UNOS as in Status 1A(E), and represented, among other things, that Patient E "has a life expectancy without a heart transplant of less than seven days". Respondent further represented that Patient E was in the same condition as documented in the narrative which appears in the Heart Status 1A Justification Form created on December 14, 2001. Respondent failed to appropriately assess Patient E's life expectancy and/or make an accurate report to UNOS.

6. Respondent, knew, or should have known that right heart catheterizations were ordered for Patient E on or about the following dates: December 5, 2001, December 17, 2001, December 26, 2001, January 2, 2002, and that the catheters on each occasion were removed within 48 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart

catheters in the evaluation of Patient E.

F. Respondent provided medical care to Patient F on various occasions at the Albany Medical Center Hospital during the period including February 15, 2001 through March 20, 2001. Respondent, among other things, performed precardiac transplant assessments of Patient F, and on March 7, 2001, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about February 22, 2001, listed Patient F with UNOS as status 1A(A), and represented, among other things, that Patient F was receiving "mechanical circulatory support for acute hemodynamic decompensation that includes one of the following:*** intra-aortic balloon pump" and/or that Patient F was in the ICU with mechanical ventilation and an intra-aortic balloon pump. Respondent, on March 22, 2001, listed Patient F with UNOS as status 1A(C) and represented, among other things, that Patient F was on mechanical ventilation.

   i. Respondent knew or should have known that Patient F was removed from the mechanical ventilator on or about February 18, 2001, and as of that time, did not qualify for status 1A(C).

   ii. Respondent knew or should have known that Patient F was removed from the intra-aortic balloon pump on or about February 25, 2001, and did not as of that time qualify for status 1A(A). Respondent failed to report to UNOS Patient F's change in status with respect to the intra-aortic balloon pump on

February 25, 2001.

G. Respondent provided medical care to Patient G at AMCH during the period including February 18, 2003 through March 11, 2003. Respondent, among other things, performed pre-cardiac transplant assessments of Patient G, and on or about February 27, 2003, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about February 25, 2003, listed Patient G with UNOS as status 1A(D), and represented, among other things, that Patient G was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that Patient G "is in the ICU with S-G receiving Milrinone. Has ICD. Cannot increase drips due to arrhythmia. EF=9%, LVID=8.7cm. May soon need VAD, if not improved."

Respondent knew or should have known that Patient G's right heart catheter had been discontinued on or about February 24, 2003, that Patient G did not have a right heart catheter in place February 25, 2003, and therefore Patient G did not quality for status 1A(D).

H. Respondent provided medical care to Patient H at AMCH during the period including March 21, 2003 through April 17, 2003. Respondent, among other things, performed pre-cardiac transplant assessments of Patient H, and on or about March 31, 2003, Respondent performed a heart transplant. Respondent's medical care deviated from accepted standards of medical care as follows:

1. Respondent, on or about March 29, 2003, listed Patient H with UNOS as status 1A(D), and represented, among other things, that Patient H was undergoing "continuous hemodynamic monitoring of the left ventricular filling pressures" and/or that Patient H "is in the ICU with S-G receiving high dose of Milrinone. Has refractory pulmonary HTN". Respondent knew or should have known that Patient H's right heart catheter was removed on or about March 22, 2003, and/or that Patient H did not on March 29, 2003 have a right heart catheter in place, and therefore, Patient H did not qualify for status 1A(D).

I. Respondent provided medical care to Patient I at AMCH during the period including October 10, 2002 through December 2, 2002. Respondent, among other things, performed pre-cardiac transplant assessments of Patient I, and on or about November 9, 2002, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about November 8, 2002, listed Patient I with UNOS as status 1A(D), and represented, among other things, that Patient I was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [I] is in the ICU with S-G receiving high doses of inotropic agents. On Lasix drip IV 40mg/hr." Respondent knew or should have known that Patient I's right heart catheter had been discontinued prior to November 8, 2002, and that Patient I was not on that date receiving hemodynamic monitoring. Respondent knew or should have known that Patient I did not qualify for status 1A(D) on November 8, 2002.

J. Respondent provided medical care to Patient J at AMCH during the period including February 21, 2001 through April 13, 2001. Respondent, among other things, performed pre-cardiac transplant assessments of Patient J, and on April 1, 2001, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about March 1, 2001, listed Patient J with UNOS as status 1A(E), and represented, among other things, that Patient J "has life expectancy without a heart transplant of less than seven days" and/or that "Patient [J] is in the ICU with S-G receiving Milrinone 0.25mcg/kg/mi and Dobutamine 2.5mcg/kg/min. Just had stroke due to paradoxial embolist due ASD. Improving neurologically. PAP=55/27, Qp/Qs=1:4."

   i. Respondent failed to appropriately assess Patient J's life expectancy and/or make an accurate report to UNOS.

   ii. Respondent knew or should have known that it was not true that Patient J "just had a stroke".

   iii. Respondent knew or should have known that Patient J's right heart catheter had been discontinued prior to March 1, 2001.

2. Respondent on or about March 8, 2001, listed Patient J with UNOS as status 1A(E), and represented, among other things, that Patient J "has a life expectancy without a heart transplant of less than seven days" and/or that "Patient [J] is in the ICU with S-G monitoring receiving Milrinone 0.25. Has right LT shunt via large ASD, PAP=60/32, W=34.

Had recent eubolor [sic] stroke."

i. Respondent failed to appropriately assess Patient J's life expectancy and/or make an accurate report to UNOS.

ii. Respondent knew or should have known that the statement that Patient J had "recent eubolor [sic] stroke," was not true.

iii. Respondent knew or should have known that Patient J's right heart catheter had been discontinued prior to March 8, 2001.

3. Respondent, on or about March 15, 2001, listed Patient J with UNOS as status 1A(E), and represented, among other things, that Patient J "has a life expectancy without a heart transplant of less than seven days" and/or "Patient [J] is in the ICU with S-G monitoring receiving Milrinone 0.25mcg/kg/min. has severe pulmonary HTN due to right left stent via asd pap-60-32, W=34 with v-wage, had new _____ _____ stroke."

i. Respondent failed to appropriately assess Patient J's life expectancy and/or make an accurate report to UNOS.

ii. Respondent knew or should have known that the statement that Patient J had a new stroke, was not true.

iii. Respondent knew or should have known that Patient J's right heart catheter had been discontinued.

4. Respondent, on or about March 22, 2001, listed Patient J with UNOS as status 1A(E), and represented, among other things, that Patient J "has a life expectancy without a heart transplant of less than seven

days." Respondent failed to appropriately assess Patient J's life expectancy and/or make an accurate report to UNOS.

5. Respondent, knew or should have known that right heart catheterizations were ordered for Patient J on or about the following dates: February 21, 2001, March 12, 2001, March 26, 2001, and that the catheters on each occasions were removed within 48 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient J.

K. Respondent provided medical care to Patient K at AMCH during the period including August 13, 2002 through September 17, 2002. Respondent, among other things, performed pre-cardiac transplant assessments of Patient K, and on August 27, 2002, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about August 21, 2002, listed Patient K with UNOS as status 1A(D) and represented, among other things, that Patient K was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [K] is in the ICU with S-G receiving multiple drips. Has pulmonary HTN and low CI. CREA=1.6".

Respondent knew or should have known that Patient K's right heart catheter had been discontinued prior to August 21, 2002, and that as of that date, Patient K did not qualify for status 1A(D).

2. Respondent, knew or should have known that right heart catheterizations were ordered for Patient K on or about the following dates: August 13, 2002, August 17, 2002 and August 26, 2002, and that the catheters on each occasion were removed within 72 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient K.

L. Respondent provided medical care to Patient L at AMCH during the period including July 26, 2001 through October 18, 2001. Respondent, among other things, performed pre-cardiac transplant assessments of Patient L, and on September 21, 2001, Respondent performed a heart transplant. Respondent deviated from accepted standards of professional conduct as follows:

1. Respondent, on or about July 27, 2001, listed Patient L with UNOS as status 1A(D) and represented, among other things, that Patient L was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [L] is in the ICU with S-G receiving above drip. Has severe low cardiac output state. Class I.V. symptoms. May require mechanical assist device if not improved." Respondent knew or should have known that Patient L had a right heart catheter placed on July 26, 2001 which was removed on July 29, 2001. Respondent failed to report to UNOS on or after July 29, 2001, that as of that date, Patient L did not qualify for status 1A(D).

2. Respondent, on or about August 3, 2001, listed Patient L with UNOS as status 1A(D), and represented, among other things, that Patient L

was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures".

Respondent knew or should have known that Patient L's right heart catheter had been discontinued prior to August 3, 2001, and that as of that date, Patient L did not qualify for status 1A(D).

3. Respondent, on or about August 10, 2001, listed Patient L with UNOS as status 1A(D) and represented, among other things, that Patient L was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [L] on Dobutamine 5mcg, Milrinone 0.25 mcg, has swan, had an episode of cardiac arrest/asytole has decreased cardiac output. PAS=20, PAD=12, PAM=15".

Respondent knew or should have known that Patient L's right heart catheter had been discontinued prior to August 10, 2001, and that as of that date, Patient L did not qualify for status 1A(D).

4. Respondent, on or about August 17, 2001, listed Patient L with UNOS as status 1A(E), and represented, among other things, that Patient L "has a life expectancy without a heart transplant of less than seven days" and/or that "Patient [L] on Dobutamine 5mcg, Milrinone 0.24mcg, he is in-patient with PAS=20, PAD=14, PAM=16, had episode of cardiac arrest asytole, has decreased cardiac output".

i. Respondent failed to appropriately assess Patient L's life expectancy and/or make an accurate report of Patient L's

condition to UNOS.

ii. Respondent knew or should have known that on August 17, 2001 Patient L was not receiving Dobutamine.

5. Respondent, on or about August 31, 2001, listed Patient L with UNOS as status 1A(D), and represented, among other things, that Patient L was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [L] is in the ICU receiving above drips. Has low cardiac outputs. Declining kidney function. CRE=2.9. Had an episode of asystole. May need LVAD soon".

Respondent knew or should have known that Patient L's right heart catheter had been discontinued prior to October 31, 2001, and that as of that date, Patient L did not qualify for status 1A(D).

6. Respondent, on or about September 7, 2001, listed Patient L with UNOS as status 1A(D) and represented, among other things, that Patient L was undergoing "continuous hemodynamic monitoring of left ventricular filling pressures" and/or that "Patient [L] is in the ICU with swan receiving triple IVE inotrope agents. Renal failure continues." Respondent knew or should have known that Patient L's right heart catheter had been discontinued prior to September 7, 2001, and that as of that date, Patient L did not qualify for status 1A(D).

7. Respondent on or about September 13, 2001, listed Patient L with UNOS as in status 1A(E), and represented, among other things, that Patient L "has a life expectancy without a heart transplant of less than

seven days" and/or that "Patient [L] is in the ICU with S-G receiving above drips, Dopamine 2mcg, Dobutamine 3.0mcg, Milrinone 0.25. Having severe episodes of chest pain requiring therapy doses of IV Morphine, CRE=1.7."

i. Respondent failed to appropriately assess Patient L's life expectancy and/or make an accurate report to UNOS.

ii. Respondent knew or should have known that Patient L's right heart catheter had been removed prior to September 13, 2001 and/or that Patient L was not as of that date, on either Dobutamine or Dopamine.

8. Respondent, knew or should have known that right heart catheterizations were ordered for Patient L on or about the following dates: July 26, 2001, August 6, 2001, August 13, 2001, August 28, 2001, September 3, 2001, and September 11, 2001, and that these catheters on each occasion were removed within 72 hours of their placement. On one or more occasions, Respondent failed to appropriately use right heart catheters in the evaluation of Patient L.

## SPECIFICATION OF CHARGES

## FIRST THROUGH TWELFTH SPECIFICATIONS

## FRAUD IN THE PRACTICE OF MEDICINE

Respondent is charged with professional misconduct under N.Y. Education Law §6530(2) by reason of his having practiced the profession of medicine fraudulently in that Petitioner charges the following:

1. Facts as set forth in the following paragraphs: A and A.1, A and A.2, A and A.3, and/or A and A.4.

2. Facts as set forth in the following paragraphs: B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, and/or B and B.9.

3. Facts as set forth in the following paragraphs: C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, C and C.7, and/or C and C.8.

4. Facts as set forth in the following paragraphs: D and D.1(I), D and D.1(ii), D and D.2(I), D and D.2(ii), D and D.2(iii), D and D.3(I), D and D.3(ii), D and D.4(I), D and D.4(ii), D and D.5(I), D and D.5(ii), and/or D and D.6.

5. Facts as set forth in the following paragraphs: E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, and/or E and E.6.

6. Facts as set forth in the following paragraphs: F and F.1(I), and or F and F.1(ii).

7. Facts as set forth in the following paragraphs: G and G.1.

8. Facts as set forth in the following paragraphs: H and H.1.

9. Facts as set forth in the following paragraphs: I and I.1.

10. Facts as set forth in the following paragraphs: J and J.1(I), J and J.1(ii), J and J.1(iii), Jand J.2(i), J and J.2(ii), J and J.2(iii), J and J.3(I), J and J.3(ii), J and J.3(iii), J and J.4, and/or J and J.5.

11. Facts as set forth in the following paragraphs: K and K.1, and/or K and K.2.

12. Facts as set forth in the following paragraphs: L and L.1, L and L.2, L and L.3, L and L.4(i), L and L.4(ii), L and L.5, L and L.6, L and L.7(I), L and L.7(ii), and/or L and L.8.

DATED: October 14, 2005
Albany, New York

BRIAN M. MURPHY
Chief Counsel
Bureau of Professional
Medical Conduct